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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,198	03/10/2004	John Burwell	2549-114-27	2440
7590	03/18/2005		EXAMINER	
PIPER RUDNICK LLP Supervisor, Patent Prosecution Services 1200 Nineteenth Street, N.W. Washington, DC 20036-2412			MAYO, TARA L	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/796,198	BURWELL ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Tara L. Mayo	3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-39 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____ .

## **DETAILED ACTION**

### *Drawings*

1. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because it includes the legal phraseology. Delete "means" on line 2. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The scope of claim 2 is indefinite because it is unclear to what structure Applicant is referring with the recitation of "top".

The term "easily" in claim 2 is a relative term which renders the claim indefinite. The term "easily" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1 through 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manger et al. (U.S. Patent No. 6,729,797 B2) in view of Osborne (U.S. Patent No. 5,567,083A).

Manger et al. '797, as seen in Figures 1, 2C, 3 and 4, an underground storage system comprising:  
with regard to claims 1 and 39,

a double walled riser sump (10) having spaced apart, vertical inner and outer walls (16C, 20C) defining an annular space (22C) through which fluid may flow (col. 5, lines 14 through 18); and

a monitoring fluid reservoir (32; col. 8, line 64 through col. 9, line 4) in fluid communication with the annular space;  
with regard to claim 2,

wherein the reservoir is positioned near the top of the sump;  
with regard to claim 3,

wherein the reservoir is connected to the annular space by two tubes (as seen in Figure 4, connected to ports 24 and 141), and the reservoir has a vent hole formed near a top of the reservoir

with regard to claim 4,

further comprising a thin film (30) disposed within the annular space, such that liquid can flow through out the annular space (col. 5, lines 5 through 30);

with regard to claim 5,

further comprising a distance fabric (30) disposed within the annular space, the distance fabric allowing liquids to flow within the annular space (col. 5, lines 5 through 30);

with regard to claim 12,

wherein the annular space is negatively pressurized;  
with regard to claim 13,

wherein the annular space is positively pressurized;  
with regard to claim 17,

wherein the sump is round; and

with regard to claim 21,

wherein the top is double-walled.

Manger et al. '797 disclose all of the features of the claimed invention with the exception(s) of:

with regard to claims 1 and 39,

an underground storage tank;

with regard to claim 10;

the monitoring fluid reservoir being filled with brine;

with regard to claim 11,

a liquid sensor disposed within the annular space;

with regard to claim 14,

a double-walled storage tank;

with regard to claim 15,

the sump being formed from fiber reinforced plastic;

with regard to claim 16,

the tank being formed from fiber reinforced plastic; and

with regard to claims 18 through 20,

the tank having a cross-sectional shape in the form of a polygon.

Osborne '083, as seen in Figure 1, shows an underground storage tank (13) comprising a sump (12) attached to the top of the underground tank.

With regard to claims 1 and 39, it would have been obvious to one having ordinary skill in the art of fluid storage at the time the invention was made to modify the device shown by Manger et al. '797 such that it would include an underground storage tank as taught by Osborne '083. The motivation would have been to facilitate the use of the sump with an underground fuel storage tank.

With regard to claim 10, it would have been obvious to one having ordinary skill in the art of testing at the time the invention was made to modify the device shown by the combination of Manger et al. '797 and Osborne '083 such that brine would be used as the testing fluid since it is a well known expedient.

With regard to claim 11, it is a well-known expedient in the art of liquid containment to use sensors for leak detection.

With regard to claim 14, it is a well-known expedient in the art of liquid containment to make underground liquid storage tanks double-walled for the prevention of leakage of the contained liquid into the surrounding soil.

With regard to claims 15 and 16, it is a well-known expedient in the art of containment to make liquid storage devices from fiberglass reinforced plastic due to its non-corrosive properties.

With regard to claims 18 through 20, it has been held that a mere change in configuration of a claimed device is a matter of choice within the ordinary level of skill.

With regard to claims 22 through 38, the method steps recited therein are inherent to the assembly of the device shown by the combination of Manger et al. '797 and Osborne '083.

*Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 703-305-3019. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit: 3671

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 T. M.  
13 March 2005



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Group 1300